

**Passavant Retirement and Health Center, Inc. and
General Teamsters Local Union No. 538 affili-
ated with International Brotherhood of Team-
sters, AFL-CIO, Petitioner. Case 6-UC-337**

May 13, 1994

DECISION ON REVIEW AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

The Petitioner filed a petition under Section 9(b) of the National Labor Relations Act to clarify an existing nonprofessional unit by including within it resident coordinators employed by the Employer at a separate facility. On September 2, 1993, the Regional Director for Region 6 issued a Decision, Order and Clarification of Bargaining Unit in which he found that the resident coordinators should be accreted to the existing unit, and denied the Employer's motion to dismiss the petition. In accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision, Order and Clarification of Bargaining Unit. The Union filed a letter in opposition. By order dated November 26, 1993, the Employer's request for review was granted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the briefs on review, and has decided, for the reasons set forth below, to reverse the Regional Director's decision and dismiss the unit clarification petition on the ground that the employees sought to be accreted constitute a separate appropriate unit.

The Employer, a division of Lutheran Affiliated Services (LAS), provides retirement and health care services at its facilities located on a 42-acre campus in Zelienople, Pennsylvania. LAS provides the Employer with management services in such areas as human resources, marketing, fiscal services, general administration, planning and development, and management information systems.

The campus consists of a 159-bed skilled nursing unit with 78 adjoining assisted living units (Main Building), a 77-unit independent living facility (Wittenberg Place), a low-income facility (Luther Court), 130 independent living cottages, and a new 92-unit assisted living facility (Newhaven Court).

The Petitioner currently represents the nurses aides, resident assistants, podiatry aide, and rehabilitation assistants employed at the Main Building. The Petitioner does not represent employees employed at any other campus facility. The Petitioner now seeks to clarify the existing unit by adding the eight resident coordinators

employed at the Employer's newest facility, Newhaven Court.

Newhaven Court is approximately 300 yards from the Main Building and is comprised of 17 "neighborhoods," each having 4 to 6 apartments clustered around a common living room. Each apartment consists of a bedroom, kitchen, and bathroom. Newhaven Court residents also have exclusive access to a dining room, library, beauty and barber shop, spa, laundry room, and activities center. Like other residents on campus, Newhaven Court residents can utilize the medical, dental, rehabilitative, and podiatry services offered in the Main Building. Maintenance, transportation, and security services are provided by the Employer. Newhaven Court has its own financing and budget.

At the Main Building, the Employer employs about 50 to 65 nurses aides, 5 to 10 resident assistants, 1 podiatry aide, and 1 rehabilitation assistant, all of whom are represented by the Union. The podiatry aide reports to Clinic Director Linda Eiler and the rehabilitation assistant reports to Director of Nursing Bernie Mehno. The nurses aides work in the skilled nursing unit and report through nursing supervisors to Mehno. The nurses aides perform direct hands-on patient care such as feeding, bathing, and toileting residents.

Resident assistants work in the assisted living units in the Main Building. They are classified under the Clinic Department and report through licensed practical nurses to Clinic Director Eiler. Like the nurses aides in the skilled nursing unit, resident assistants are required to be certified nurses aides. When staffing needs require, nurses aides fill in for resident assistants in the assisted living units.

Resident assistants are responsible for assisting residents with activities of daily living such as dressing, undressing, and showering; escorting residents to various appointments, activities, or meals; reminding residents of appointments and activities; insuring that residents do not wander off; passing out medications; performing treatments such as foot soaks; assisting with whirlpool baths; taking vital signs if medically required; and completing documentation of medications, treatments, and incidents. With regard to whirlpool baths, the resident assistants operate a hydraulic lift chair to lift the residents in and out of the bath. A resident assistant spends approximately 30 to 45 minutes on each shift passing out medications.

Nurses aides and resident assistants attend quarterly meetings with Director of Nursing Mehno, and resident assistants attend monthly meetings with Clinic Director Eiler. Nurses aides and resident assistants wear a uniform and receive wages and benefits in accordance with the current collective-bargaining agreement, including coverage under the Union's health and welfare

plan. All employees in the LAS system are provided coverage under LAS' corporatewide retirement plan.

Nurses aides and resident assistants are hired by Director of Nursing Mehno, with input by Clinic Director Eiler on the hiring of resident assistants. Requests for leave are made to Mehno and Nursing Supervisor Ruth Jerome. Nurses aides and resident assistants take their breaks in the staff cafeteria and breakrooms in the Main Building.

The resident coordinators sought to be included in the unit are employed at Newhaven Court, the new assisted living facility which opened February 16, 1993. At the time of the hearing there were 67 residents at Newhaven Court, 10 of whom transferred from other facilities on campus. Likewise, some residents have transferred from Newhaven Court to the skilled nursing unit in the Main Building.

Newhaven Court has the following staffing schedule: three to five resident coordinators and one LPN work 7 a.m. to 3 p.m., two resident coordinators and one LPN work 3 to 11 p.m., and two resident coordinators and one LPN work 11 p.m. to 7 a.m. Program Director Scholle, a registered nurse, works 8 a.m. to 6 p.m. Each resident coordinator is responsible for approximately 10 residents.

The role of the resident coordinator is to encourage residents to be as independent as possible. To this end, the resident coordinators provide encouragement and coaching to the residents rather than traditional hands-on nursing care. Unlike the nurses aides and resident assistants at the Main Building, resident coordinators are not required to be certified nurses aides. If necessary, they provide assistance to residents in dressing, showering, or other daily tasks, and occasionally escort residents to appointments, activities, and meals. Because Newhaven Court residents do not require assistance in eating, resident coordinators are generally available to help serve and clean up. Similarly, instead of making rounds to pass out medications, resident coordinators remind residents to take their own medications. Although resident coordinators accompany residents to the spa, they do not lift or bathe residents as is the practice in the Main Building. Resident coordinators also participate in recreational activities, lead weekly group discussions about diet and exercise, and, according to Resident Coordinator Jerry Lee Snyder, they spend more than 50 percent of their time socializing with residents.

Program Manager Barbara Scholle is completely responsible for the day-to-day operations at Newhaven Court. She directly supervises the resident coordinators' daily activities, prepares the schedule, and takes all requests for leave. Scholle may be contacted at home for any nonmedical problems that arise in her absence; any medical emergencies that arise in her absence are reported to the nursing supervisor in the

Main Building. Scholle reports to Director of Clinical Services Millie Fincke for programming matters, and to Executive Director William Pratt¹ for fiscal and administrative matters.

Scholle independently evaluates the resident coordinators and determines discipline when necessary. In one instance, Scholle decided to terminate a resident coordinator who was not where she should have been at the time of an emergency. Although Scholle talked to Executive Director Bill Pratt and Director of Clinical Services Fincke before terminating the employee, she testified that she did so only to insure that she was following the Company's personnel rules.

Scholle interviews and hires the resident coordinators. Although Scholle testified that she informed Fincke of the applicants she intended to hire, the record does not show that Fincke independently reviewed the qualifications of the applicants or rejected any of Scholle's selections. Job openings are posted throughout the LAS system, including the Employer's Main Building, and advertised in community newspapers. Employees of LAS-managed facilities are granted interviews with Scholle. Of the six employees from the Main Building who applied for resident coordinator positions, two were hired. Both of these employees maintained the seniority and wage rates they received at the Main Building. Despite the hiring of two former nurses aides, Scholle stressed that nursing experience was not a prerequisite for the resident coordinator position, particularly in light of Newhaven Court's philosophy of "coaching" residents to be independent rather than providing hands-on nursing care.

Scholle conducts monthly meetings for all Newhaven Court staff and separate monthly meetings for the resident coordinators and LPNs. Resident coordinators do not wear a uniform, although they are encouraged to wear dark skirts or slacks and light-colored tops. Their wages and benefits are established by LAS' corporate policy, and they are covered by LAS' retirement plan and Blue Cross insurance.

In addition to the resident coordinators, Newhaven Court employs an activities director, nine dietary employees, and three housekeepers. Dietary and housekeeping employees are hired by Scholle in conjunction with the heads of the Employer's dietary and environmental services departments. Scheduling for these employees and leave requests are handled by their respective department heads.

The Regional Director found that resident coordinators should be accreted to the unit. He found that the Employer maintains a functionally integrated retirement community offering a full continuum of health care to its residents through which they can move as

¹ Pratt also has direct responsibility for Wittenberg Place and 130 independent living cottages.

their personal or medical needs require, and that Newhaven Court is merely a component part of that larger community. He found that Newhaven Court is dependent on LAS and the Employer for management services such as human resources, marketing development, fiscal services, general administration, planning and development, and services such as maintenance, laundry, transportation, and security. The Regional Director also cited the Employer's involvement in the hiring of dietary and housekeeping employees for Newhaven Court, and its scheduling of those employees. The Regional Director explained that the functional integration of the campus facilities diminishes the significance of the lack of regular interchange between resident coordinators and unit employees.

The Regional Director further found that the job duties and functions of resident assistants and resident coordinators are substantially similar. He noted that both groups of employees have cared for some of the same residents, and that two of the eight resident coordinators were formerly nurses aides in the Main Building. In addition, the Regional Director found that the unit employees and resident coordinators have comparable wages and benefits, common upper-level supervision (director of clinical services), and close geographic proximity. Based on these factors, the Regional Director concluded that the resident coordinators should be accreted to the existing unit.

In its request for review, the Employer contends that the Petitioner has not rebutted the Board's longstanding presumption that a single facility unit is appropriate. In support, the Employer states that Newhaven Court is a separate, distinct facility with its own employees, budget, purchases, food preparation, and separate location at least 300 yards from the Main Building. The Employer further contends that there is a total absence of employee interchange between the two facilities, lack of common supervision, and that the two groups of employees have different skills, duties, and terms and conditions of employment.

The Board has followed a restrictive policy in finding accretions to existing units because employees accreted to such units are not accorded a self-determination election, and the Board seeks to insure the employees' rights to determine their own bargaining representative. *Compact Video Services*, 284 NLRB 117, 119 (1987). Further, "[i]t is well settled that the doctrine of accretion will not be applied where the employee group sought to be added to an established bargaining unit is so composed that it may separately constitute an appropriate bargaining unit." *Hershey Foods Corp.*, 208 NLRB 452, 458 (1974), *enfd.* 506 F.2d 1052 (3d Cir. 1974).

The Board has consistently held that a single facility unit geographically separated from other facilities operated by the same employer is presumptively appro-

priate even though a broader unit might also be appropriate. *Manor Healthcare Corp.*, 285 NLRB 224, 225 (1987). This presumption may be rebutted by a showing that the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit, and that the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted. *Safeway Stores*, 256 NLRB 918 (1981). In determining whether the presumption has been rebutted, the Board examines such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; common supervision; distance between locations; and bargaining history. *Mercy Health Services*, 311 NLRB 367 (1993); *Compact Video Services*, *supra*. The Board has identified the degree of interchange and separate supervision as particularly important factors in determining whether an accretion is warranted. *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984), *affd.* sub nom. *Machinists Local 1414 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985).

Although Newhaven Court is located on the same campus as the Main Building and other Employer facilities, we find that Newhaven Court, rather than all of the buildings on the campus, constitutes a "single facility" for purposes of applying the presumption. See *Mercywood Health Building*, 287 NLRB 1114 (1988), *enf. denied* sub nom. *NLRB v. McAuley Health Center*, 885 F.2d 341 (6th Cir. 1989). As noted above, Newhaven Court is a separate and distinct assisted living facility 300 yards away from the Main Building with its own residents and staff. Because Newhaven Court is a separate facility, we find that a unit of resident coordinators at Newhaven Court is presumptively appropriate.

We further find that the Petitioner has not rebutted this presumption. In so finding, we rely particularly on Program Manager Scholle's degree of autonomy reflected in her day-to-day direction of the Newhaven Court employees. In addition, it is undisputed that there is no regular interchange or contact among employees at the two facilities,² and that the two groups of employees do not share any immediate supervisors. The absence of employee interchange and the lack of common immediate supervision are "especially important" factors militating against a finding of accretion. *Towne Ford Sales*, *supra*, 270 NLRB at 311.

In this regard, we disagree with the significance accorded by the Regional Director to the fact that both groups of employees have common upper-level super-

² Contrary to the Regional Director, we accord little weight to the fact that two bargaining unit employees were permanently transferred to Newhaven Court when it opened. See *Renzetti's Market*, 238 NLRB 174, 175 fn. 8 (1978).

vision. The resident coordinators are hired, evaluated, and independently supervised by Program Director Scholle, but the employees at the Main Building report directly to charge nurses and RN supervisors. Scholle is solely responsible for the hiring and disciplining of resident coordinators. There is no evidence that any upper-level manager reviews Scholle's hiring or disciplinary decisions, or that they have ever reversed her personnel decisions. Indeed, the record shows that Scholle reports to Fincke only with regard to programming matters and to insure that she is following corporatewide policies. Thus, it is Scholle, and not upper-level management, who exercises the day-to-day control and supervision of matters of interest to the resident coordinators.

We also note that resident coordinators, unlike the employees in the Main Building, are not required to be certified nurses aides and do not attend regular in-service training sessions. As noted above, resident coordinators do not provide the same level of hands-on nursing care to residents as do the unit employees. Thus, we disagree with the Regional Director's finding that the job functions of the resident coordinators and resident assistants are substantially similar.

Although we agree with the Regional Director that Newhaven Court's geographical proximity to, and integration with, the Employer's other campus facilities are factors favoring accretion, in our view they are outweighed by the factors of substantial local autonomy, separate daily supervision, lack of interchange, and differences in skills and job duties. Under these circumstances, we find that the Petitioner has not rebutted the presumption that a single facility unit at Newhaven Court is appropriate. *Staten Island University Hospital*, 308 NLRB 58 (1992). We further find *Mercy Health Services*, supra, cited by the Regional Director, distinguishable. There, the Board found that the single facility presumption was rebutted where there was evidence of common day-to-day supervision, significant employee interchange between the facilities, and daily telephone contact. The record here reveals that there is no common day-to-day supervision, interchange, or daily contact between the resident coordinators at Newhaven Court and the unit employees at the Main Building. Accordingly, we grant the Employer's motion to dismiss the petition.

ORDER

The petition is dismissed.